

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 657 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VYAS AMRUTLAL MEGHJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 657 of 2004
MR RD DAVE for Petitioner No. 1-3
MR NAGESH SOOD, AGP for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/08/2004

ORAL JUDGEMENT

Rule. Mr.Nagesh Sood, Ld. AGP waives service of
rule on behalf of the respondents. With the consent of
the parties, the matter is taken up for final hearing

today.

2. By way of this Special Civil Application under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad dated 27.10.2003/14.11.2003 in Revision Application No.74 of 2003 in dismissing the same and confirming the order passed by the Collector, Junagadh dated 16.6.2003 passed in Appeal No.46 of 1999 and also the order passed by the Deputy Collector, Veraval dated 9.3.1999 in setting aside the order passed by the Mamlatdar, Keshod dated 18.11.1997 by which the Mamlatdar has granted permission for conversion and removing the restrictions with regard to land bearing S.No.185 situated at Village Silodhar.

3. One Amratlal Meghji Vyas - petitioner no.1 herein was granted the land bearing S.No.125 and 185 situated at Village Silodhar as "Avediya" as a new tenure land having conditions not to transfer the land in question without prior permission. It seems that the petitioner no.1 sold the land bearing S.No.125 in the year 1982 to the petitioner no.2 by Regd. Sale Deed without prior permission of the Competent Authority and in breach of the order by which the petitioner no.1 was granted the land. The name of the petitioner no.2 was also mutated in the record of rights with regard to land bearing S.No.125. It seems that the petitioner no.1 wanted to sell the land i.e. land bearing S.No.185, the petitioner submitted an application before the Mamlatdar, Keshod for granting necessary permission with regard to S.No.125 as well as S.No.185 and the Mamlatdar, Keshod by its order dated 18.11.1997 granted the permission qua the land bearing S.No.185 only. It seems that the Deputy Collector, Veraval had taken the said order in suo motu review by issuing show cause notice dated 3.1.1998 and the petitioner no.1 Amrutlal Meghji Vyas - original land owner was served with a show cause notice and he was directed to show cause why the order passed by the Mamlatdar, Keshod dated 18.11.1997 should not be cancelled alleging interalia that the land bearing S.No.125 came to be sold without prior permission in the year 1982 and that the name of Amrutlal Meghji Vyas came to be entered in the record only in 1956. Thereafter, after giving an opportunity to the petitioner no.1, the Deputy Collector, Veraval by order dated 9.3.1999 set aside the order passed by the Mamlatdar, Keshod dated 18.11.1997 which was with respect to land bearing S.No.185. It seems that while cancelling the order passed by the Mamlatdar, Keshod dated 18.11.1997 which

was with respect to land bearing S.No.185, the Deputy Collector, Veraval considering the land with regard to S.No.185 and without discussing anything with regard to the order passed by the Mamlatdar, Keshod dated 18.11.1997 with regard to land bearing S.No.125 held that the land was transferred by the petitioner no.1 to the petitioner no.2 by registered sale deed with prior permission. In the meantime, the petitioner no.1 has already sold the land bearing S.No.185 to the petitioner no.3 by registered sale deed on 9.1.1998 on the basis of the order passed by the Mamlatdar dated 18.11.1997. Being aggrieved and dissatisfied with the same, the petitioner no.1 preferred appeal before the Collector, Junagadh which was numbered as Appeal No.46 of 1999. In the appeal filed by the petitioner no.1, the Collector while dismissing the appeal and confirming the order passed by the Deputy Collector, Veraval passed an order directing to forfeit the land bearing S.No.125 as well as S.No.185 and to take the decision. Being aggrieved and dissatisfied with the order passed by the Collector, Junagadh dated 16.5.2003, the petitioners preferred Revision Application before the State Government i.e. Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad being Revision Application No.74 of 2003. It was contended on behalf of the petitioners that before passing the impugned order, no opportunity of being heard has been given to the petitioner no.2 and 3 who are the purchasers of the land in question i.e. land bearing S.No.125 and 185 and that order passed by the Deputy Collector, Veraval is non-application of mind in as much as while quashing and setting aside the order with regard to S.No.185. All through out, the Deputy Collector has considered the transfer with regard to land bearing S.No.125 and the Deputy Collector has not discussed anything with regard to the legality and validity of the order passed by the Mamlatdar, Keshod with regard to land bearing S.No.185. In spite of the aforesaid facts and circumstances, without considering the aforesaid submissions, the Learned Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad by its judgment and order dated 27.10.2003/4.11.2003 dismissed the said revision application and confirmed the orders passed by both the authorities below.

4. Being aggrieved and dissatisfied the same, the petitioners have preferred this Special Civil Application under Article 226 and 227 of the Constitution of India.

5. Shri R.D.Dave, Learned Advocate for the petitioners has submitted that before passing the

impugned order dated 9.3.1999 and while quashing and setting aside the order passed by the Mamlatdar, Keshod dated 18.11.1997, the petitioner no.3 who is the purchaser of land bearing S.No.185 is not heard and no opportunity of being heard has been given to him. He has further submitted that while considering the order passed by the Mamlatdar, Keshod with regard to S.No.185, there is no discussion whatsoever with regard to the order passed by the Mamlatdar, Keshod with regard to land bearing S.No.185 and only on the ground that S.No.125 was sold and transferred by the petitioner no.1 to the petitioner no.2 in the year 1982 without prior permission, the Deputy Collector, Veraval has quashed and set aside the order passed by the Mamlatdar, Keshod which was a well reasoned order. And considering the policy of the State Government that after 15 years permission can be granted, the permission was granted by the Mamlatdar, Keshod. He has further submitted that so far as the order with regard to the land bearing S.No.125 is concerned, there is no show cause notice issued by any of the authorities and in proceedings with regard to land bearing S.No.185, no order could have been passed by the authorities with regard to the land bearing S.No.125.

6. Shri Sud, Learned AGP has tried to support the orders passed by the authorities below. He has submitted that in fact, so far as the land bearing S.No.125 is concerned, the application of the petitioner was already rejected and therefore, the order with regard to the land bearing S.No.125 is rightly passed. He has further submitted that so far as the land bearing S.No.185 is concerned when the Deputy Collector has found that earlier the petitioner no.1 has sold the land without prior permission, he was not entitled to permission with regard to S.No.185 also. So far the argument on behalf of Shri Dave, Ld. Advocate with regard to hearing the parties is concerned, Shri Sud, Ld. AGP has submitted that in view of the fact that the petitioner no.1 has sold the land of S.No.185 after issuance of the notice i.e. 3.1.1998, he was not required to be heard. Therefore, he requests to dismiss the present Special Civil Application.

8. Heard the Learned Advocates for the parties.

9. The order was passed by the Mamlatdar, Keshod with regard to land bearing S.No.185. That order came to be passed on 18.11.1997. A show cause notice came to be issued by the Deputy Collector on 3.1.1998. There is nothing on record to show when the petitioner no.1 came to be served with the show cause notice dated 3.1.1998.

It seems that on the basis of the order passed by Mamlatdar, Keshod dated 18.11.1997, the petitioner no.1 has sold S.No.185 to the petitioner no.3. When the proceedings were conducted by the Deputy Collector, Veraval, it was brought to the notice of the Deputy Collector with regard to the transaction between the petitioner no.1 and petitioner no.3 with regard to the land bearing S.No.185. When it was brought to the notice of the Deputy Collector with regard to transferring the land in favour of the petitioner no.3 by way of registered sale deed, it was incumbent on the part of the Deputy Collector to give an opportunity of being heard also to the petitioner no.3. Even otherwise, it seems that while passing the impugned order dated 9.3.1999, the Deputy Collector has not considered at all the facts with regard to S.N.185. He has considered the facts with regard to S.No.125 only. There is no discussion whatsoever how the order passed by the Mamlatdar, Keshod dated 18.11.1997 with regard to S.No.185 is bad and/or illegal. And even the Collector while confirming the order passed by the Deputy Collector which was with regard to quashing and setting aside the order passed by the Mamlatdar, Keshod dated 18.11.1997 which was with regard to S.No.185, passed an order with regard to S.No.125 also which was not subject matter before him. He could not have passed any order with regard to S.No.125, that too, without giving an opportunity of being heard to the petitioner no.2. Considering the aforesaid facts and circumstances of the case, more particularly, when, before passing the impugned order by the Deputy Collector, Veraval, no opportunity was given to the petitioner no.3 with regard to S.No.185 and the order passed by the Collector also with regard to S.No.125, the petitioner no.2 who has purchased the land in question in 1992 by registered sale deed and no opportunity of being heard is given to him. In view of the aforesaid facts and circumstances of the case, only on the ground that the impugned orders are passed without giving any opportunity of being heard to the petitioner no. 2 and 3 who are purchasers of S.No.185 and 125 , the orders are required to be quashed and set aside. Accordingly, the the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad dated 27.10.2003/14.11.2003 in Revision Application No.74 of 2003, the order passed by the Collector, Junagadh dated 16.6.2003 passed in Appeal No.46 of 1999 and the order passed by the Deputy Collector, Veraval dated 9.3.1999 are required to be quashed and set aside and the same are hereby quashed and set aside. It will be open for the Competent Authority to initiate proceedings in accordance with law and after

giving an opportunity of being heard to all the concerned parties. Rule is made absolute accordingly with no order as to costs.

(M.R.Shah, J)

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